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Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

94-65

In the Matter of Bell Atlantic Petition for Clarification in CC Docket No. 93-193, Phase I, Part 2 and CC Docket No. 94-65	CCB/CPD 97-25

COMMENTS OF SOUTHWESTERN BELL TELEPHONE COMPANY AND PACIFIC BELL

Southwestern Bell Telephone Company and Pacific Bell filed these comments supporting Bell Atlantic's Petition for Clarification. Bell Atlantic seeks clarification that the Commission's recent Memorandum Opinion and Order ("the Order"),[1] *inter alia* requires changes in all baskets, not just the common line basket, in order to effectively reallocate sharing liability for the 1993-1996 years. Bell Atlantic contends that while the Order addresses procedures to reallocate sharing to the common line basket, it must be clarified to also address the procedure to reallocate sharing from other baskets.[2]

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[1] 1993-1996 Annual Access Filings, CC Docket 93-193, Memorandum Opinion and Order, released April 17, 1997.

[2] Public Notice DA 97-1137.

The Commission's Rules require carriers to return to their customers 50% of their earnings over a specified amount. No one has questioned that Bell Atlantic (and Pacific Bell) did exactly that. The rules require 50% sharing, and 50% sharing is what was calculated and implemented for those years. Bell Atlantic seeks clarification because it believes that the Order may be interpreted to contemplate only a downward exogenous adjustment. Yet, in their original submission on the annual filings at issue, AT&T called for revenue-neutral upward and downward price cap indices ("PCI") adjustments by Bell Atlantic and Pacific Bell.[3] And, the Commission's Order also acknowledged that upward and downward PCI adjustments were appropriate to correct the sharing misallocation.[4]

The Commission, in the Order, requires refunds to be calculated by a one time exogenous cost adjustment.[5] Paragraphs 104 and 105 provide the methodology for calculating refund liabilities resulting from overcharges caused by the sharing misallocation. However, as Bell Atlantic points out, an additional adjustment is required in order to comport with the price cap rules. An equal positive exogenous cost adjustment is necessary to adjust the Traffic Sensitive and Trunking basket's PCIs to correct for the over-allocation of sharing to these two baskets. If the Commission were to find otherwise, carriers would be forced to share more than the amount required by the Commission's rules.

In the course of the annual filings in which Pacific calculated sharing in the manner the FCC has now found to be improper, neither the Commission nor petitioners ever disputed the amount of sharing. Rather, it was the allocation of sharing among the baskets that was subject to

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[3] See, for example, Petition of AT&T Corp., filed April 26, 1994, Appendix C.
[4] Order, ¶ 97, et. seq.
[5] Order ¶104-106.

investigation.[6] The original price cap rules prescribed a 50-50 sharing zone when LECs earn between 12.25% and 16.25%.[7] Those rules therefore require a prescribed 50% sharing amount. The Price Cap Order and rules, and the LEC Price Cap Performance Review do not prescribe a deviation from that amount for any reason.

If LECs were required to include only the negative adjustment to the Common Line basket and ignore the corresponding upward adjustments to the other baskets, the effect would be not to correct the sharing misallocation, *but to distort it even further*. LECs would then be sharing more than 50% for the time periods in issue. Our calculations show that if AT&T and MCI prevail on this issue, Pacific would be forced to share over 64% of its earnings during the affected time periods; nearly 30% more than what the rules require.[8] *Neither Bell Atlantic's nor Pacific Bell's total sharing obligation is not and has never been in question; it is only the method used to allocate the obligation to the baskets that is at issue.*

Customers are not harmed by these offsetting upward adjustments to these indices. Allowing Bell Atlantic and Pacific Bell to include the corresponding upward exogenous adjustments to the Switching and Trunking baskets will not overly advantage or disadvantage any particular customers. Precluding these offsetting PCI adjustments would result in the Commission giving an undue windfall for access customers.

Pacific's methodology looks at the actual PCIs in each basket and compares that with the PCIs that should have been in place had we calculated our sharing adjustment as required in the

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[6] See 1994 Annual Access Tariff Filing, CC Docket 94-65, Memorandum Opinion and Order Suspending Rates, (1994) ¶11.

[7] Policy and Rules Concerning Rates for Dominant Carriers, 5 FCC Rcd 6786 (1990) ("Price Cap Order"); 47 C.F.R. 61.45(d)(2). Subsequently, different sharing productivity options were prescribed. LEC Price Cap Performance Review, 10 FCC Rcd 8961 (1995).

[8] See Appendix A attached for these calculations.

Order. As William Taylor explains in his affidavit (page 10) attached to Bell Atlantic's Petition for Clarification filed May 19, 1997:

> The result of that calculation can be positive or negative in any basket, and in aggregate, customers of interstate services were not overcharged at all. The correct amount of earnings sharing adjustment was calculated and returned to customers through reductions in the PCIs, SBIs and CCL rates over all four baskets in every year. If the allocation had been done in accordance with the 1993-96 Access Tariff Order, the allocation across baskets would have been different in each year, but the total amount returned to customers would have remained the same as was actually returned to customers in each year.

Southwestern Bell Telephone and Pacific Bell agree with Dr. Taylor's conclusions. The Commission states that the PCIs should be trued up to "what would have been in place had they been calculated consistent with the Commission's rules and decisions."[9] An adjustment across all baskets is the only way to reallocate sharing dollars while recognizing that the total amount of sharing was proper. An exogenous decrease in the Common Line basket must necessarily be accompanied by upward adjustments in the other baskets or the effect is to require greater than 50% sharing. The Commission lacks authority to burden a LEC with an obligation greater than its rules permit.

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[9] Order ¶97.

In conclusion, the Commission should clarify that the only way to correct the misallocation identified in its Order, and the only way permitted by the Commission's rules, is to adjust all baskets so that no party gets a windfall and no party is adversely affected.

Respectfully submitted,

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APPENDIX A

Pacific Bell

Impact of Partial Correction by Resdistributing Sharing to Common Line Basket Only
(Dollars)

Ln	Item	Source	Amount Shared In 1994 Access Tariff (A)	Amount Shared In 1995 Access Tariff (B)	Amount Shared In 1996 Access Tariff (C)	Total All Filings (D=A+B+C)
1	Total 50% Tariff Sharing	Amended 1997 TRP, WP I, II & III	9,874,296	70,443,074	18,636,402	98,953,772
2	Impact of Sharing Redistribution on Common Line	Amended 1997 TRP, WP V.A	2,007,766	20,113,874	6,440,952	28,562,592
3	Adjusted Sharing with Redistribution to Common Line Basket Only	Ln 1 + Ln 2	11,882,062	90,556,948	25,077,354	127,516,364
4	Percent Increase in Sharing with Redistribution to CL Basket Only	(Ln 3 - Ln 1)/ Ln 1	20.33%	28.55%	34.56%	28.86%
5	Effective Sharing on Earnings above 12.25% (The proportion of earnings above 12.25% that would effectively be shared if sharing redistribution is applied to Common Line Basket only.)	Ln 3 / (Ln 1* 2)	60.17%	64.28%	67.28%	64.43%